

***Paskov v Hull* [2008] WASC 163 (28 July 2008) – Western Australia Supreme Court**

‘Aggravated assault occasioning bodily harm’ – ‘Deterrence’ – ‘Double jeopardy in sentencing’ – ‘People affected by substance abuse’ – ‘Physical violence and harm’ – ‘Proximity of offences’ – ‘Sentencing’ – ‘Totality’

Charge/s: Two counts of aggravated assault occasioning bodily harm (aggravating factor: that the applicant was in a domestic relationship with the victim), escaping from lawful custody, failure to comply with bail conditions.

Appeal Type: Application for leave to appeal against sentence.

Facts: The applicant had an argument with the complainant (his de facto partner). The applicant then pushed the back of her head into a window which caused the window to smash and the complainant to fall on the ground. He then dragged her out of a door and kicked and punched her multiple times which caused her head to hit a railing, at which point she passed out. The applicant then evaded arrested for some days. After being granted bail, he phoned the complainant in breach of protective bail conditions. The second assault occurred 6 months later. The applicant became aggressive and dropped the complainant onto the ground and kicked her repeatedly in the rib area. He also used a ring on his left hand to gouge her left eye, resulting in a bruised and swollen eye and a cut to the eyeball. He had long standing problems with drug and alcohol abuse. His criminal history included a violent offence in a previous de facto relationship. He was sentenced to an effective term of 2 years and 2 months’ imprisonment. The sentences for the escaping custody and second aggravated assault offences were made cumulative.

Issue/s:

1. Whether the sentence was manifestly excessive.
2. Whether the Magistrate erred in making the sentences for the second count of aggravated assault occasioning bodily harm and escaping custody cumulative because the offences occurred on the same day.

Decision and Reasoning: Leave to appeal was refused.

1. Hasluck J noted that the offences were particularly serious. The Magistrate gave appropriate consideration to this as well as to personal and general deterrence. This was, ‘apt in respect of a severe attack on a defenceless woman who was in a relationship with the applicant, especially when the attacks were sustained and persistent’ (see at [52]). As such, the sentences could not be described as manifestly excessive.
2. The Court held that there was a separation in time between the offences and they were of a different kind. Hasluck J referred to the ‘common elements principle’ and acknowledged that it would be wrong

two punish an offender twice where 'there is essentially one transaction or commonality is evident' but that this did not arise on the facts (see at [51]).